

ORIGINAL

ANN BAVENDER*
HARRY F. COLE
ANNE GOODWIN CRUMP
VINCENT J. CURTIS, JR.
PAUL J. FELDMAN
FRANK R. JAZZO
EUGENE M. LAWSON, JR.
MITCHELL LAZARUS
SUSAN A. MARSHALL
HARRY C. MARTIN
LEE G. PETRO*
RAYMOND J. QUIANZON
JAMES P. RILEY
ALISON J. SHAPIRO
KATHLEEN VICTORY
JENNIFER DINE WAGNER*
LILIANA E. WARD
HOWARD M. WEISS

* NOT ADMITTED IN VIRGINIA

FLETCHER, HEALD & HILDRETH, P.L.C.

ATTORNEYS AT LAW

11th FLOOR, 1300 NORTH 17th STREET

ARLINGTON, VIRGINIA 22209-3801

OFFICE: (703) 812-0400

FAX: (703) 812-0486

www.fhhlaw.com

September 26, 2003

RETIRED MEMBERS
RICHARD HILDRETH
GEORGE PETRUTSAS

CONSULTANT FOR INTERNATIONAL AND
INTERGOVERNMENTAL AFFAIRS
SHELDON J. KRYS
U. S. AMBASSADOR (ret.)

OF COUNSEL
EDWARD A. CAINE*
DONALD J. EVANS
FRANCISCO R. MONTERO
EDWARD S. O'NEILL*

WRITER'S DIRECT

DOCKET FILE COPY ORIGINAL

(703) 812-0420
curtis@fhhlaw.com

BY HAND DELIVERY

Marlene H. Dortch, Esquire

Secretary

Federal Communications Commission

445 12th Street, S.W., Room TW-B204

Washington, D.C. 20554

RECEIVED

SEP 26 2003

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Attn: The Honorable Arthur I. Steinberg
Administrative Law Judge

Re: EB Docket No. 03-152

Dear Ms. Dortch:

On behalf of Richard B. Smith, pursuant to Section 1.223 of the Commission's Rules, there is transmitted herewith, an original and six copies of a "Statement for the Record".

If additional information is necessary, please communicate with this office.

Please date stamp the extra enclosed copy and return it to the undersigned.

Very truly yours,



Vincent J. Curtis, Jr.

Harry F. Cole

Susan A. Marshall

Counsel for Richard B. Smith

VJC/st

Enclosure

cc: See Certificate of Service

No. of Copies rec'd
List ABOVE

014

RECEIVED

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

SEP 26 2003

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

EB Docket No. 03-152

In the Matter of)	
)	
WILLIAM L. ZAWILA)	Facility ID No. 72672
)	
Permittee of FM Station KNKS,)	
Coalinga, California)	
)	
AVENAL EDUCATIONAL SERVICES, INC.)	Facility ID No. 3365
)	
Permittee of FM Station KAAX,)	
Avenal, California)	
)	
CENTRAL VALLEY EDUCATIONAL)	Facility ID No. 9993
SERVICES, INC.)	
)	
Permittee of FM Station KAJP,)	
Firebaugh, California)	
)	
H.L. CHARLES D/B/A FORD CITY)	Facility ID No. 22030
BROADCASTING)	
)	
Permittee of FM Station KZPE,)	
Ford City, California)	
)	
LINDA WARE D/B/A LINDSAY)	Facility ID No. 37725
BROADCASTING)	
)	
Licensee of FM Station KZPO,)	
Lindsay, California)	
)	
In re Application of)	
)	
WESTERN PACIFIC BROADCASTING, INC.)	File No. BR-19970804YJ
)	Facility ID No. 71936
For Renewal of License for AM Station KKFO,)	
Coalinga, California)	
)	
TO: The Honorable Arthur I. Steinberg		
Administrative Law Judge		

STATEMENT FOR THE RECORD

1. Richard B. Smith hereby submits this Statement for the Record to correct two misstatements which were included in a letter filed on September 25, 2003, by William L. Zawila and the other persons or entities (collectively, “Zawila”) listed in the caption above. The purpose of the Zawila letter was supposedly simply “to notify Judge Steinberg that Zawila does not intend to burden this proceeding by responding to” Mr. Smith’s Opposition which was filed on September 24, 2003. Zawila Letter at 1. Had Zawila limited himself to such a notification, there would have been no need for any further submissions here.

2. But Zawila chose not to so limit himself.

3. Rather, Zawila’s letter contained two factually inaccurate charges. First, Zawila asserted that Mr. Smith’s Opposition – to which Zawila was supposedly not responding – was “unauthorized”. That is simply wrong. As its title makes incredibly clear, the pleading in question was an opposition directed to a motion to strike filed by Zawila. Having chosen to file such a motion, Zawila opened the door for Mr. Smith to file an opposition, as Mr. Smith had a right to do. Mr. Smith availed himself of that right. Contrary to Zawila’s claim, Mr. Smith’s pleading was *not* unauthorized at all, and the record herein should so reflect.¹

¹ Actually, Zawila characterizes Mr. Smith’s pleading as “another” unauthorized pleading, the suggestion being that Mr. Smith’s Consolidated Reply was also “unauthorized”. While Mr. Smith’s Reply was not a pleading contemplated by the Commission’s Rules, Mr. Smith recognized that and specifically sought leave to file it. Since Mr. Smith’s Reply was thus tendered subject to the Presiding Judge’s action on his motion for leave to file, it is difficult to see how Zawila could conclude that the Reply was “unauthorized”. Had Zawila chosen to oppose Mr. Smith’s motion for leave to file, Mr. Smith would have had no right to reply to such an opposition. Instead, as discussed above, Zawila elected, for whatever reason, to file a motion to strike, thereby opening a new pleading cycle affording Mr. Smith the opportunity to oppose that motion.

4. Second, in a footnote to his letter, Zawila stated as follows:

We are constrained to note, however, that in footnote 2 of Smith's pleading, his reference to unproven allegations against Mr. Zawila as already proven fact goes beyond the bounds of zealous advocacy and should be rebuked.

Zawila Letter, n. 2. The footnote to which Zawila refers read as follows:

As far as insulting anyone's intelligence goes, Mr. Smith is *not* the one who has claimed to have built a 300-foot tower which then happened to vanish, supposedly dismantled by meticulous vandals who removed not only the tower itself, but also any trace that the tower had ever been in place – vandals so meticulous that they must also have used a Men-in-Black type memory eraser on people who work near the supposed tower, since those people said they had never seen such a tower at that site. *See* Hearing Designation Order, ¶¶12-14.

5. Review of Mr. Smith's footnote demonstrates that Mr. Smith was not referring to any "unproven allegations" against Zawila. The Hearing Designation Order herein – supported by the Commission's records – makes abundantly clear that Zawila represented to the Commission that he had built a 300-foot tower which was destroyed by vandalism. HDO at ¶14. The Hearing Designation Order herein also makes abundantly clear that the Commission's own investigators, inspecting the site where the alleged tower had allegedly been built, found no evidence of any such tower. HDO at ¶12-13. The Hearing Designation Order herein also makes abundantly clear that workers near the site told Commission personnel that they had never seen such a tower. HDO at ¶12.

6. So it's not clear what "unproven allegations" Zawila might be referring to. Mr. Smith's footnote was merely intended to reflect the story which Zawila has already told. The mere reiteration of that story underscores its inherent incredibility. The fact that Zawila views the mere recitation of his own story as somehow damning suggests that Zawila himself may find his own story incredible.

7. In any event, the fact is that Mr. Smith's footnote simply reflected the record herein, and did not by any means "go[] beyond the bounds of zealous advocacy". Mr. Smith takes serious exception to that regrettable and unfounded assertion.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "VJC", is written over a horizontal line.

Vincent J. Curtis, Jr., Esq.
Harry F. Cole, Esq.
Susan A. Marshall, Esq.

Counsel for Richard B. Smith

Fletcher, Heald & Hildreth, P.L.C.
1300 North 17th Street, 11th Floor
Arlington, VA 22209
(703) 812-0400

September 26, 2003

CERTIFICATE OF SERVICE

I, Suzanne Thompson, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C., do hereby certify that a copy of the foregoing "Statement for the Record" was sent this 26th day of September, 2003, by first-class United States Mail, postage prepaid to:

Howard J. Braun, Esquire
Shelley Sadowsky, Esquire (by first class mail and email)
Katten Muchin Zavis Rosenman
1025 Thomas Jefferson Street, N.W.
Suite 700 East Lobby
Washington, D.C. 20007-5201
Counsel for William L. Zawila *et al.*

Maureen F. Del Duca, Chief
James W. Shook, Esquire (by hand and email)
David M. Janas, Esquire
Investigations and Hearings Division, Enforcement Bureau
Federal Communications Commission
445 12th Street, S.W., Room 3-B443
Washington, DC 20554

The Honorable Arthur I. Steinberg (by hand and fax)
Administrative Law Judge
Federal Communications Commission
445 12th Street, S.W. – Room 1-C861
Washington, D.C. 20554


Suzanne Thompson